

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Bible Broadcasting Network, Inc.)	Facility ID No. 77191
)	NAL/Acct. No. MB-200741410187
Licensee of FM Translator Station K217EY)	FRN: 0006373559
Laramie, Wyoming)	File No. BRFT-20050701ABZ

FORFEITURE ORDER

Adopted: January 20, 2010

Released: January 21, 2010

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order*, we issue a monetary forfeiture in the amount of two hundred and fifty dollars (\$250) to Bible Broadcasting Network, Inc. (“BBN”), licensee of FM translator station K217EY, Laramie, Wyoming (“Station”), for willfully violating Section 73.3539 of the Commission’s Rules (“Rules”) by failing to timely file a license renewal application for the Station.¹

II. BACKGROUND

2. On February 12, 2007, the Bureau issued a *Notice of Apparent Liability for Forfeiture* (“NAL”) in the amount of one thousand five hundred dollars (\$1,500) to BBN for its failure to timely file the Station’s renewal application.² As noted in the *NAL*, BBN’s renewal application for the Station’s license term was due on June 1, 2005, four months prior to the October 1, 2005, expiration date.³ BBN did not file the application until July 1, 2005. BBN explained that “[i]nadvertently, the application for renewal of license of K217EY was omitted from the KYFO-FM application,” which was timely filed on May 31, 2005.⁴ BBN submitted a “Response to Notice of Apparent Liability for Forfeiture and Petition for Reconsideration” (“Response”) on March 13, 2007.

3. In its Response, BBN states that its failure to timely file the renewal application was unintentional. It explains that it timely filed a joint license renewal application for Station KYFO-FM in Utah and three FM translator stations in Wyoming, but only after the filing deadline passed did it realize that it had failed to include Station K217EY in that application. It states that the renewal application for the Station was submitted on July 1, 2005, the same day that the omission was discovered. BBN further claims that the Commission improperly imposed a forfeiture for untimeliness, arguing that Section 1.80 of the Rules prescribes a forfeiture for failure to file a required form, rather than failure to *timely* file a required form. It further asserts that its failure to timely file the license renewal application was neither willful nor repeated. BBN also argues that the Commission improperly dismissed its request for waiver

¹ 47 C.F.R. § 73.3539; 47 U.S.C. § 301.

² *Bible Broadcasting Network, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 2691 (MB 2007).

³ See 47 C.F.R. §§ 73.1020, 73.3539(a). The Commission granted the license renewal application on February 12, 2007.

⁴ See Exhibit 1 of the captioned application. Station K217EY serves as a translator for Station KYFO-FM.

of Section 73.3539 of the Rules, asserting that if the Commission had waived the Rule, it could not have found BBN apparently liable for its violation. Finally, while BBN does not claim inability to pay, it states that the Commission should take into account the fact that BBN is a noncommercial educational broadcaster. BBN asserts these reasons warrant a cancellation or reduction of the assessed forfeiture.

III. DISCUSSION

4. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Act,⁵ Section 1.80 of the Rules,⁶ and the Commission's *Forfeiture Policy Statement*.⁷ In assessing forfeitures, Section 503(b)(2)(E) of the Act requires that we take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.⁸

5. BBN does not dispute that it failed to file a timely renewal application for the Station, but states that these violations were unintentional. As the Commission has held, however, violations resulting from inadvertent error are willful violations.⁹ In the context of a forfeiture action, "willful" does not require a finding that the rule violation was intentional. Rather, the term "willful" means that the violator knew that it was taking the action in question, irrespective of any intent to violate the Rules.¹⁰ BBN has failed to justify why departure from this precedent is warranted.

6. We also reject BBN's argument that Section 1.80 of the Rules constrains the Commission to impose forfeiture orders to instances in which applications are not filed at all, as opposed to untimely-filed applications. It is well-settled that the Commission may impose a forfeiture for a late-filed renewal application.¹¹ We also find that the Commission properly dismissed BBN's Section 73.3539 waiver request. A party seeking a waiver must demonstrate that deviation from a general rule is warranted by

⁵ 47 U.S.C. § 503(b).

⁶ 47 C.F.R. § 1.80.

⁷ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

⁸ 47 U.S.C. § 503(b)(2)(E).

⁹ *See PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088 (1992); *See Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) ("*Southern California*") (stating that "inadvertence ... is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance"); *Standard Communications Corp.*, Memorandum Opinion and Order, 1 FCC Rcd 358 (1986) (stating that "employee acts or omissions, such as clerical errors in failing to file required forms, do not excuse violations").

¹⁰ *See Five Star Parking d/b/a Five Star Taxi Dispatch*, Forfeiture Order, 23 FCC Rcd 2649 (EB 2008) (declining to reduce or cancel forfeiture for late-filed renewal based on licensee's administrative error); *Southern California*, 6 FCC Rcd at 4387. *See also Domtar Industries, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 13811, 13815 (EB 2006); *National Weather Networks, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 3922, 3925 (EB 2006).

¹¹ *See Bible Broadcasting Network, Inc.*, Forfeiture Order, 23 FCC Rcd 8743 (MB 2008) (assessing a monetary forfeiture in the amount of \$250 for licensee's willful violation of Section 73.3539 of the Rules); *Good News Translator Assoc.*, Memorandum Opinion and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 20922 (MB 2007) (same).

special circumstances and will serve the public interest.¹² As discussed above, inadvertent error does not excuse BBN's Rule violation or provide a basis for waiver.

7. Although BBN "does not contend that it is unable to pay the forfeiture" it notes that "the Bureau did not apparently take into account that BBN is a noncommercial educational broadcaster" and that "the funds will come from listener donations that could better be used in the operations of the network."¹³ It is established Commission policy that there is no proposed forfeiture exemption or reduction based on the noncommercial status of a station.¹⁴ We therefore decline to reduce the forfeiture amount based on BBN's noncommercial status.

8. We have considered BBN's Response and the record of this case in light of the above statutory factors, our Rules, and the *Forfeiture Policy Statement*. We conclude that BBN willfully¹⁵ violated Section 73.3539 of the Rules. However, given the Commission's recent decisions assessing forfeitures in the amount of \$250 against licensees of translator stations for violations of Section 73.3539 of the Rules, we agree with BBN's request to reduce the forfeiture amount.¹⁶ Accordingly, we will reduce the forfeiture amount against BBN to two hundred and fifty dollars (\$250).

IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.283 and 1.80 of the Commission's Rules,¹⁷ that Bible Broadcasting Network, Inc. SHALL FORFEIT to the United States the sum of two hundred and fifty dollars (\$250) for willfully violating Section 73.3539 of the Commission's Rules.

10. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Commission's Rules within 30 days of the release of this Forfeiture Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹⁸ Payment of the forfeiture must be made by check or similar instrument,

¹² See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1157-59 (D.C. Cir. 1969)).

¹³ *Id.* at 4.

¹⁴ See, e.g., *Des Moines Independent Community School District*, Memorandum Opinion and Order, 24 FCC Rcd 3869, 3871 (MB 2009), citing *Bible Broadcasting Network, Inc.*, Forfeiture Order, 23 FCC Rcd 8743, 8745 (MB 2008) (rejecting licensee's argument that its forfeiture should be cancelled or reduced because of its noncommercial educational status). See also *Lebanon Educational Broadcasting Foundation*, Memorandum Opinion and Order, 21 FCC Rcd 1442, 1446 (EB 2006) ("Where the Rule is violated, Section 1.80 provides that a monetary forfeiture may be imposed, and there is no exemption or reduction based on the noncommercial status of a station.").

¹⁵ Section 312(f)(1) of the Act defines "willful" as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law. 47 U.S.C. § 312(f)(1). The legislative history of Section 312(f)(1) of the Act clarifies that this definition of willful applies to Sections 312 and 503(b) of the Act, H.R. REP. NO. 97-765, 51 (Conf. Rep.), and the Commission has so interpreted the terms in the Section 503(b) context. See *Southern California*, 6 FCC Rcd at 4387-88.

¹⁶ See, e.g., *Valley Baptist Church and Christian School*, Forfeiture Order, 23 FCC Rcd 8740 (MB 2008) (reducing *sua sponte* forfeiture amount from \$1,500 to \$250 for translator station's late renewal filing); *Good News Translator Assoc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 20922 (MB 2007) (finding translator licensee apparently liable for monetary forfeiture in the amount of \$250 for its willful violation of Section 73.3539 of the Rules); *Bible Broadcasting Network, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 11445 (MB 2007) (same).

¹⁷ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.283, 1.80.

¹⁸ 47 U.S.C. § 504(a).

payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced in the caption above. Payment by check or money order may be mailed to Federal Communications Commission, at P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank--Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank: TREAS NYC, BNF: FCC/ACV--27000001 and account number as expressed on the remittance instrument. If completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code).¹⁹

11. IT IS FURTHER ORDERED, that a copy of this Forfeiture Order shall be sent by Certified Mail Return Receipt Requested to Bible Broadcasting Network, Inc., c/o Lowell L. Davey, 11530 Carmel Commons Boulevard, Charlotte, NC 28226, and its counsel, Smithwick & Belendiuk, P.C., c/o Gary S. Smithwick, 5028 Wisconsin Avenue, N.W., Suite 301, Washington, D.C. 20016.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau

¹⁹ See 47 C.F.R. § 1.1914.